

CALFED ECOSYSTEM RESTORATION:

STREAMLINED ENVIRONMENTAL PROCESS

Coordinated Approach

Introduction

It is important to start now on habitat restoration projects in the Estuary and its watershed to begin the long process of its restoration. The environmental process for CALFED ecosystem restoration projects however, could be very time consuming, potentially resulting in these projects being delayed for several years. This could also be an obstacle for potential restoration projects where funding is available now (e.g. Category III) but the lengthy process of completing environmental documentation and acquiring permits can preclude funding worthy projects. The purpose of this report is to identify a strategy for ^{planning}streamlining the environmental process for habitat restoration projects. ^{coordinating}

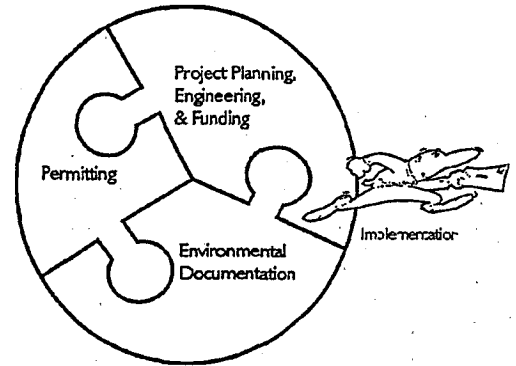
A group of key agency individuals and interested participants met to discuss ^{planning}streamlining ^{coordinating}the permit process. During the discussion several approaches to streamlining at various steps of the environmental documentation process were recommended. Steps were identified to address potential delays in the process and potential remedies. The group's suggestions and comments were compiled and formed into a systematic approach to the preparation of environmental documentation and acquisition of permits. This approach is designed to provide a project manager or a project work group with a sequence of major steps and permitting opportunities.

The report provides a definition of what is, and what is not, a streamlined environmental process; a conceptual approach to the process; State and federal permits that can be expedited to help the process; and an example using the proposed process. It is envisioned that for this process to be successful, a regulatory steering review team should be formed to evaluate the process and facilitate adaptive management. A designated group of key agency individuals and interested participants could be the catalyst for that team. In addition, an environmental processing team or "Permit Central" should be formed to assist the Lead Agency in compiling and coordinating the necessary environmental documentation leading to success in acquiring permits. A "Permit Central" would ensure the project's environmental documentation is ready when the project is. The techniques described here could also be used after the programmatic EIR/EIS for CALFED is finalized.

Draft 1

Streamlined Environmental Process Definition

A streamlined environmental process is defined as: *state and federal environmental compliance and associated environmental permitting which is completed in a concurrent, efficient, and timely manner so as to not preclude scheduled project implementation.*



What Streamlining Is Not

A streamlined permit process is not intended to circumvent any required environmental permitting processes and ensures compliance with both the California Environmental Quality Act (CEQA), California Endangered Species Act (CESA), National Environmental Policy Act (NEPA), and Federal Endangered Species Act (ESA).

Long Term Commitment

A streamlined environmental process for ecosystem restoration projects can only be accomplished through a long term commitment to coordinate and provide guidance during the environmental process for each selected project. This commitment could be accomplished through a project overseer and a regulatory steering review team (described below). The project overseer could be CALFED's Environmental Coordinator or another selected person.

Another important element for a successful long-term streamlined environmental process is the funding mechanism. Since the funding for environmental review and documentation is often overlooked, a funding mechanism should be established prior to the onset of the project.

The following describes the teams and regulatory involvement needed to establish the foundation for a successful streamlining effort:

- **Regulatory Steering Review Team**

A regulatory steering review team should be formed to evaluate the streamlined process and facilitate an adaptive management approach. A designated group of key agency individuals and interested participants could be the catalyst for that

team. The team's purpose is to assure that CEQA/NEPA, CESA, ESA, and all other State and Federal laws, executive orders, and administrative policies are being fulfilled. The team's overview will also help identify potential concerns and monitor how these concerns are addressed.

- Environmental Team ("Permit Central")

To assist in a successful streamlined environmental documentation and permitting process an environmental processing team or "Permit Central" should be formed. "Permit Central" prevents the possibility of delay which could occur from a lack of dedicated personnel responsible for putting together the environmental documentation for a specific project or program. This environmental processing team would assist the Lead Agency in compiling and coordinating the necessary environmental documentation leading to success in acquiring permits. The goal of "Permit Central" is to ensure the project's environmental documentation is ready when the project is. "Permit Central" should be fully funded and given sole responsibility to coordinate gathering permits and completing other environmental tasks. The team would receive oversight from the regulatory steering review team.

- Regulatory Involvement

Designated regulatory staff dedicated to work on these restoration projects will encourage environmental documentation to be processed in a more timely manner. To ensure full engagement of the required regulatory staff a funding mechanism should be established to contract staffing for environmental process work. This designated staff would receive prepared documentation from "Permit Central" and provide third party review in support of the Federal and State decision making process. One such example of this is in the Department of Fish and Game's Bay-Delta Division where a special water project planning unit provides departmental environmental review, response and permitting for Department of Water Resources' projects. A focused water project unit can address all phases of project planning such as interagency consultation, permitting, development of protection measures and mitigation, biological opinions, and determining monitoring requirements.

Streamlined Environmental Process

The actions required for NEPA/CEQA and ESA/CESA are intertwined. One step is taken under one act, to be followed by a step under the other. Both must be complied with fully. Neither has "priority" in the strict sense of the word. The following describes each of the streamlined environmental process steps and the effort associated with each step. These steps

include Preliminary Planning and Early Agency Consultation, Initial Study/Environmental Assessment Preparation, Environmental Document Preparation and Environmental Permitting Compliance, Agency and Public Review and Response, Completion of CEQA/NEPA Documentation. Figure 1 provides a flowchart further illustrating these steps.

Step 1: Preliminary Project Planning/Early Agency Consultation

• Project Selection

Projects should be selected based on their ability to achieve the desired Program objectives and do not cause any potentially significant effect on the environment. For permit streamlining purposes, simpler/smaller projects are generally easier to move through the process. Similar projects can be grouped and moved through the regulatory process concurrently. Projects can be selected or modified to avoid or reduce adverse impacts and agency jurisdiction. Early agency coordination facilitates the efficiency of the regulatory process.

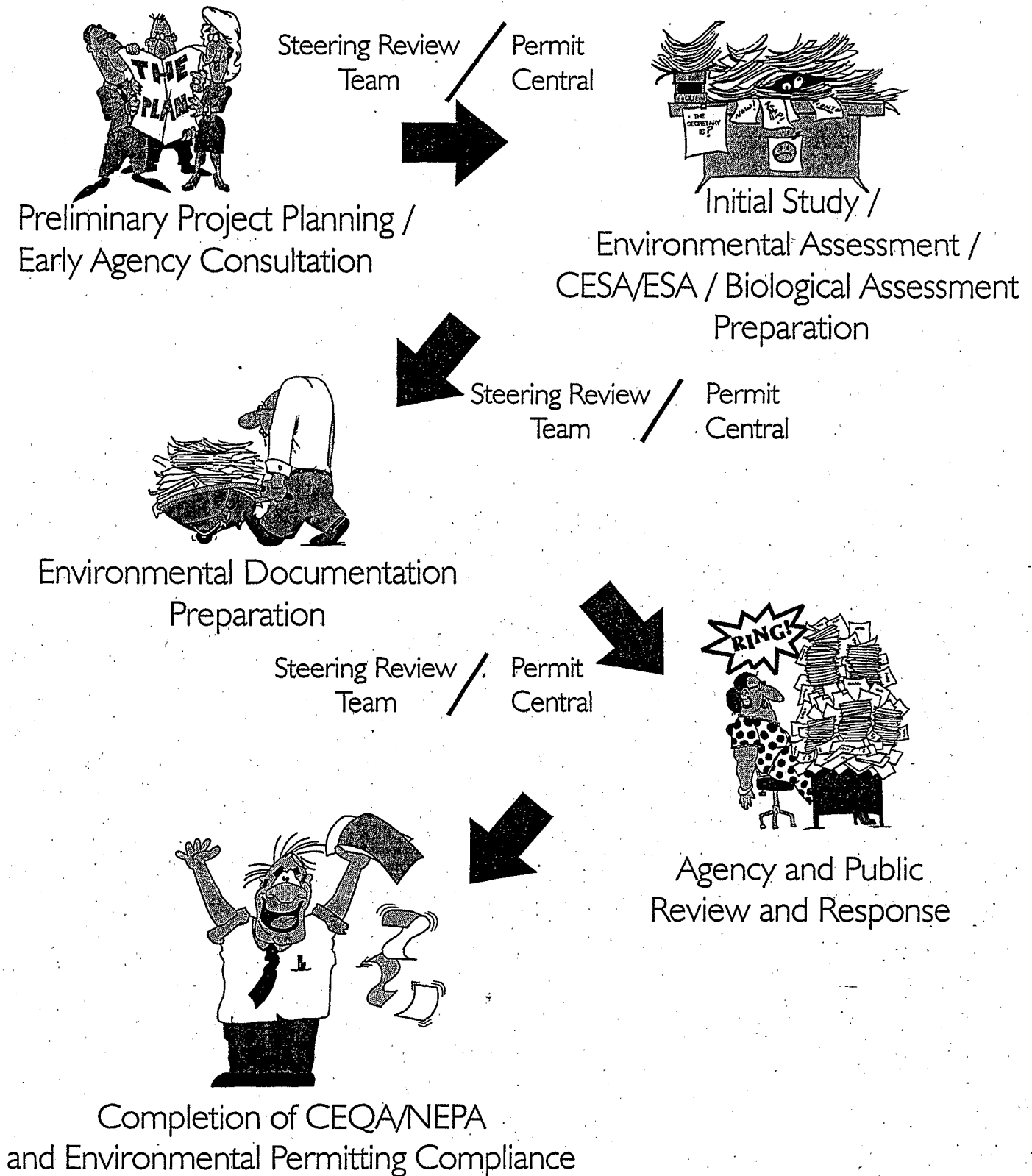
- Preliminary planning should include an in-house identification of issues, authorities, and agencies. Appropriate research, including a literature search and review of previous environmental documents for similar projects should be completed as part of the preliminary planning process. The project should have broad consensus that it will be beneficial to ecosystem restoration. Therefore, the intended result of the restoration project should demonstrate a clear benefit.

Projects which would have a greater likelihood of benefitting from a streamlined environmental review and regulatory process possess:

Acceptability

Projects which are acceptable to all regulatory agencies (COE, USFWS, NMFS, SLC, DFG and RWQCB). If there is consensus on a project, then the need for a lengthy, formal endangered species consultation may be eliminated. Perhaps a general consultation or some other way of developing pre-determined conditions can be developed. The regulatory steering review team could be very helpful in developing a list of the type of projects where there is consensus on the value of the projects.

Streamlined Environmental Process



Similar Actions

Projects which are made up of similar actions in a tightly defined regional area could be permitted under a broad permit, such as a COE General Permit (see below). Library literature or previous environmental documentation can be coupled together for projects of similar actions.

Quick Success

Successful completion of the regulatory process for simple, less complex projects can facilitate cooperation and coordination for projects with greater complexity.

Partnering

Sharing responsibilities and tasks with others can provide momentum and project support. Allow cooperators to carry their fair share of the load, and resist the temptation to take on more than you can handle. Cooperative projects may often take much longer to accomplish than anticipated, so set realistic timeframes.

Lead Agency

Once a project is selected, a lead agency is determined. The Federal and State lead agency or agencies is responsible for preparing or taking primary responsibility for preparing the environmental documentation for NEPA/CEQA and ESA/CESA compliance. In a streamlined process there should be one authority or one lead agency with other agencies stepping back. This will eliminate duplication with Federal, State, and local procedures. By providing for joint preparation and ensuring compliance with other agency procedures an agency may adopt appropriate environmental documentation prepared by another agency.

Agency Consultation Process

To encourage resolution of potential conflict as early as possible, Federal and State agencies should, and project applicants may, consult informally

with the Department of Fish and Game (DFG), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS). Before initiating consultation the agency should evaluate the sufficiency of data regarding the project and its effects on any threatened and endangered species. It is the responsibility of the lead agency to provide the fish and wildlife agencies the information necessary to adequately evaluate whether the proposed project will jeopardize any state or federally listed species.

Step 2: Initial Study/Environmental Assessment and CESA/ESA Biological Assessment Preparation

The second step consists of several processes which are the most time consuming and involve the majority of the work to help coordinate and finalize the environmental process. This step involves satisfying NEPA/CEQA through development of Initial Studies (IS) and Environmental Assessments (EA). This step also attempts to reduce the risk of a project being challenged. This would include: communicating with experienced and cooperative regulatory agency personnel; inviting outside interests; bringing together land owners; providing full and fair disclosure; enforcement of the State and Federal Endangered Species acts; agreement up front to take care of concerns; and provide good biological information.

In a streamlined process for NEPA and CEQA the focus should be on the project's EA and IS which presents the reasons why an action not otherwise excluded, will not have a significant effect on the human environment and for which a FONSI and Negative Declaration or Mitigated Negative Declaration and Mitigated FONSI would be prepared. It may then be unnecessary to pursue a rigorous examination of various alternative courses of actions when the analysis of a preferred course of action reveals that there is no significant impact on the environment or that the action is not controversial.

For CESA and ESA compliance, first and foremost, the presence or absence of listed species must be absolutely, positively verified during early project planning. If present, the possible effects of the implementation of the action on the species or its habitat must be documented.

If a listed species will not be affected by the project an informal consultation with the federal and state agencies can be conducted. The result would be a letter under ESA and CESA from the Federal and State agencies which indicates that unless new information reveals effects of the action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the ESA or CESA is necessary.

If a listed species may be affected by the project, under ESA a document called a Biological Assessment (BA) is needed. This assessment evaluates the likelihood that the proposed action may adversely affect the listed species. The proposing agency may conduct its own studies, and present them for evaluation. This could be done to assist in speeding the evaluation process. The BA also is used to determine whether formal consultation or a conference is required. Prior to filing for a Federal permit, the permit applicant and Federal agency may initiate early consultation with USFWS and NMFS. USFWS and NMFS are charged with formulating a biological opinion as to whether the action is likely to jeopardize the continued existence of species or destroy or adversely modify its critical habitat.

CESA does not formally call for a BA. The equivalent of a biological assessment should be in the CEQA documentation which can provide sufficient information for DFG to prepare a finding. The consultation requirements of the CESA parallel and incorporate the consultation requirements of CEQA. If it is determined that jeopardy would not result, a mitigated negative declaration may be sufficient for CEQA compliance.

Step 3: Environmental Document Preparation

This step involves the preparation of Negative Declarations, FONSI, Mitigated Negative Declarations, and Mitigated FONSI. Any needed or proposed mitigation measures must be incorporated and the projects revised accordingly before the negative declaration is released for public review. This approach serves the public participation policies in CEQA/NEPA by requiring the lead agency to consider the public comments on a proposed Negative Declarations, FONSI, Mitigated Negative Declarations, and Mitigated FONSI.

Step 4: Agency and Public Review and Response

The lead agency preparing the environmental documentation circulates the Draft FONSI/Negative Declaration or Mitigated FONSI/Negative Declaration and provides public notice of that fact within a reasonable period of time prior to adoption. The FONSI/Negative Declaration or Mitigated FONSI/Negative Declaration prepared for regulatory and public review and comment should set forth this decision and the reasons for the determination.

After public and agency review all comments received should be addressed.

Step 5: Completion of CEQA/NEPA Documentation/Environmental Permitting Compliance

As a result of the public review process for a mitigated Negative Declaration/FONSI, including administrative decisions and public hearings, the

lead agency may conclude that certain mitigation measures identified may be deleted and substitute for other mitigation measures that the lead agency finds after holding a public hearing on the matter are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. The environmental documentation should also include a program of monitoring or reporting to ensure that the provisions or revisions are complied with during implementation of the project.

Several Federal and State permits require the environmental documentation to be completed prior to being obtained. If the project meets the applicable requirements the following permits can provide opportunities to streamline the permit process:

Federal Permits

ESA Section 7

To satisfy Section 7 an Implementation Agreement is an approach which allows the project proponent, Federal action agency and the Federal fish and wildlife agencies to enter into a three way agreement. This agreement sets forth the obligations of each party to conserve species and avoid or minimize take. These agreements have been incorporated into the permit issued by the authorizing agency to put the third party directly "on the hook" for compliance. On occasion they are treated as free standing agreements.

U.S. Army Corps of Engineers (COE) Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899

General Permits may be issued on a state, regional, or nationwide basis. The general permits are designed to expedite the permitting process as long as authorized activities do not result in more than minimal environmental harm. A Regional General Permit would be the best mechanism to expedite the process, at least for a class of activities that are similar in nature.

State Permits

State Lands Commission (SLC)

The SLC may lease or otherwise regulate the use of tidelands and submerged lands under its jurisdiction. Tidelands and submerged lands

may not be sold. Projects proposing to use state-owned lands for purposes other than dredging, mining, or oil, gas, or geothermal exploration must obtain a land use lease from the SLC. If a project will affect several areas of tidelands and submerged lands within a geographical region of the project the SLC could issue a "Master Land Use Lease".

California Regional Water Quality Control Board (RWQCB)

The RWQCB is able to make an expeditious review and approval of dredging and sediment placement projects with the use of a General Order Waste Discharge Requirement. The goal of the General Order Waste Discharge Requirement is to provide a set of preproject testing and monitoring requirements that a project proponent can perform and submit to the RWQCB to demonstrate their project's dredging and sediment placement activities will not create potential water quality impacts. Projects that meet the applicability requirements of the General Order will receive a Notice of Applicability which is a functional equivalent to receiving a Clean Water Act 401 Water Quality Certification.

Department of Fish and Game (DFG) Code Section 1600; Streambed Alteration Agreement (SAA)

The SAA is a legally binding agreement or contract between a project proponent and the DFG which contains the measures the project proponent must implement to avoid or mitigate any adverse impacts to fish and wildlife. To expedite the process the COE permit should be obtained prior to requesting 1600 permit therefore eliminating any DFG concerns and the SAA can be issued incorporating the mitigation measures required in the COE permit.

CESA

If a action has the potential to adversely impact a listed endangered or threatened species a 2081 Memorandum of Understanding (MOU) or a Section 2090 CESA Biological Opinion may be issued for broad programs not just specific project by project consultations. If federal documents satisfy the requirements, DFG may adopt the Federal Section 7 Biological Opinion as meeting the requirements of CESA.

Streamlined Environmental Process: An Example

San Joaquin River Diversion Screening Program

Step 1: Preliminary Project Planning/Early Agency Consultation

Project Selection

In the Bay-Delta system there are many factors or stressors that reduce ecological functions or cause mortality of species at different stages in their life cycle.

The strategy of this Screening Program is to help reverse the decline in ecosystem health by reducing or eliminating factors which may reduce the population size or health of a species. One of these factors may include direct and indirect mortality caused by water diversions from the system through unscreened diversions.

There is broad consensus from fishery agencies that screening of water diversions may reduce the direct and indirect mortality of fish species. Mitigation requirements in other programs have included screening as a criteria e.g. Suisun Marsh Screening Program. This Screening Program consists of the construction of fish screens on all diversions greater than 250 cfs on the lower San Joaquin River from Vernalis to Pittsburg to provide protection for migrating salmon smolts and other resident fish species.

Lead Agency

The DFG will be responsible for preparing or taking primary responsibility for preparing the environmental documentation for NEPA/CEQA compliance. By providing joint preparation and ensuring compliance with other agency procedures an agency may adopt appropriate environmental documentation prepared by another agency. To comply with ESA/CESA, the lead agency should consult internally within DFG and informally with the U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS).

Utilize Regulatory Steering Review Team

The regulatory steering review team is contacted to evaluate the process. The team's purpose is to assure that CEQA/NEPA, CESA, ESA, and all other State and Federal laws, executive orders, and administrative policies are being fulfilled. The team's overview at each of the steps will identify potential concerns and monitor how these concerns are addressed.

Permit Central and Regulatory Involvement

The environmental processing team or "Permit Central" is contacted to coordinate the

environmental processes. The environmental processing team assists the Lead Agency by coordinating the gathering of permits and completing other environmental tasks. The team receives oversight from the regulatory steering review team.

To ensure full engagement of the required regulatory staff set up a funding mechanism and designate regulatory staff dedicated to work on this project.

Step 2: Initial Study/Environmental Assessment and CESA/ESA Biological Assessment Preparation

Environmental processing team prepares the EA and IS to satisfy NEPA/CEQA and reduces the risk of a project being challenged by: provide full and fair disclosure; communicating with experienced and cooperative regulatory agency personnel; inviting outside interests; and bringing together land owners.

For CESA and ESA compliance, the presence or absence of listed species is verified. If present, the possible effects of the implementation of the action on the species or its habitat must be documented. No effect results in an informal consultation with the federal and state agencies. The result would be a letter under ESA and CESA from the Federal and State agencies which indicates that unless new information reveals effects of the action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the ESA or CESA is necessary.

If a listed species may be affected by the project, under ESA a document called a Biological Assessment (BA) is needed. The BA also is used to determine whether formal consultation or a conference is required. Prior to filing for a Federal permit, the permit applicant and Federal agency may initiate early consultation with USFWS and NMFS. USFWS and NMFS are charged with formulating a biological opinion as to whether the action is likely to jeopardize the continued existence of species or destroy or adversely modify its critical habitat. The DFG may adopt the Federal document and will issue a concurring Memorandum of Understanding incorporating the federal requirements for the project.

Step 3: Environmental Document Preparation

A FONSI and Negative Declaration is prepared for regulatory and public review by the environmental processing team, setting forth the decision of no significant impact to the environment and the reasons for the determination. Any needed or proposed mitigation measures must be incorporated and the projects revised accordingly.

Step 4: Agency and Public Review and Response

Submit the FONSI/Negative Declaration to USFWS and DFG. If ESA/CESA is not satisfied in Step 3, obtain biological opinions from USFWS and NMFS that verify the project is not likely to jeopardize the continued existence of species or destroy or adversely modify its critical habitat. If Federal documents satisfy the requirements, DFG should adopt the federal biological opinions.

If the previous concerns expressed by the public were adequately dealt with during the IS and EA process it should be anticipated no other concerns will arise.

Step 5: Completion of CEQA/NEPA Documentation/Environmental Permitting Compliance

A determination is made to approve a project for either a Negative Declaration/FONSI or as a result of the public review process for a mitigated Negative Declaration/FONSI, the lead agency concludes that certain mitigation measures may be deleted and substituted for other mitigation measures that the lead agency finds after holding a public hearing on the matter are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. The environmental documentation should also include a program of monitoring or reporting to ensure that the provisions or revisions are complied with during implementation of the project.

Designated regulatory staff acquire the following permits and letters of concurrence:

- Regional General Permit for 404 and Section 10 from COE;
- Notice of Applicability for 401 Water Quality Certification from RWQCB;
- Fish and Game Code 1600 Streambed Alteration Agreement; and
- Letter under ESA and CESA from the Federal and State agencies indicating no further action pursuant to the ESA or CESA is necessary.

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